IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

MISC. PETITION NO.6 OF 2004

SICOM LIMITED .. Petitioner

Vs.

Cecil Seth & Ors. .. Respondents

Mr.M.P.Rege for the petitioner

Mr.V.Iyer i/b Hariyani & Co. for the respondent no.4

CORAM : S.U.KAMDAR, J

DATED : 11TH APRIL 2005

P.C.:

1. The present petition is filed u.s.31(1)(aa) of the State Financial Corporation Act, 1951 seeking enforcement of the guarantee as against Respondent no.1 to 3.

2. Some of the material facts are as under. Respondent no.4 is a limited company and was incorporated with a project of manufacturing pharmaceutical products and formulation. Respondent no.4 applied for a term loan with the petitioner sometime in our about 1994 for a sum of Rs.100.0 lacs. However, the petitioner by that

letter dt.28.11.95 and 23.1.96 granted term loan of 70% as against application of Rs.100.0 lacs. In consideration of the grant of the said loan respondent no.4 executed an Indenture of Mortgage dt.29.1.96 in favour of the petitioner mortgaging all its right title and interest in land, building, plant and machinery and complete plant and machinery and all movable properties and assets situated at plot nos.W-4, D-27 (part), D-27 and W-3 in the Latur Industrial Area of MIDC, District Latur in the State of Maharashtra. Under the terms and conditions of the said Indenture of Mortgage respondent no.4 agreed to repay the amount of term loan of Rs.70.0 lacs in 21 quarterly instalments alongwith agreed rate of interest @ 21% p.a. Respondent no.1 to 3 executed a deed of guarantee dt.29.1.96 thereunder they agreed to make payment to the petitioner in an event of defaults by respondent no.4 in payment of instalment amount. The said guarantee is unconditional and without any demure.

3. In view of the fact that respondent no.4 did not comply with the terms and conditions of the

said sanction and did not make repayment of the instalments, petitioner stopped further disbursal of the sanctioned loan and only Rs.54.0 lacs were disbursed. By a letter dt.10.7.97 petitioner refused to disburse a further loan to the respondent no.4 and recalled the said amount due and payable by respondent no.4. On 10.3.97 a demand notice was given to respondent no.4 claiming the payment of the outstanding amount. On 17.7.97 petitioner gave a recall notice and demanded the repayment of the loan amount outstanding as due and payable by respondent no.4 to the petitioner herein. On 19.8.97 a notice u/s.29 of the State Financial Corporation Act was issued seeking to take over mortgaged assets of the respondent no.4. Respondent no.4 filed a Special Civil Suit being suit no.362 of 1997 before the Civil Judge Senior Division Latur and sought a stay. However, application for interim orders was rejected. Respondent no.4 thereafter preferred an appeal to the Aurangabad Bench of this court and by an order dt.4.9.98 stay was granted and the court directed respondent no.4 to pay Rs.3.0 lacs per quarter as quarterly instalments. Being aggrieved by the said

order, the company petition was filed before the Supreme Court of India which was admitted and by order dt.23.4.99 the order passed by Aurangabad Bench was vacated and it was directed that the pending matter should be expeditiously disposed of by the High court. The Supreme Court further directed respondent no.4 to make payment of quarterly instalment of Rs.5.0 lacs commencing from 15.5.99 and in an event of default in making payment of the aforesaid instalments petitioner was at liberty to realise the entire amount claimed by them. Respondent no.4 failed to comply with the order of the Apex Court and pay instalment of Rs.5.0 lacs per quarter and accordingly the petitioner issued a Takeover notice dt. 17.2.00 against respondent no.4 u.s.29 of the State Finance Corporation Act. Thereafter there were further negotiations for settlement. However, it seems that all the said efforts have failed.Thereafter another notice dt.8.8.04 was issued once again threatening to take over assets u.s.29 of the SFC's Act and ultimately petitioner took over possession of the mortgaged assets on 5.10.01. Inspite of various efforts respondent no.4 failed and

neglected to make payment and thereafter the petitioner has by a notice dt.4.9.03 invoked the personal guarantee issued by respondent no.1 to 3 and called upon them to make payment of the outstanding of Rs.72,34,957. Inspite of the notice respondent no.1 to 3 have failed to discharge their liabilities under the said personal guarantee executed by them and therefore petitioner has filed the present petition. As on the date of petition there was a claim outstanding of sum of Rs.79,84,793.10. Petitioner has also filed an additional affidavit. In view of the Judgment of the Supreme court in the case of Central Bank of India Vs. Ravindra and Ors reported in 2002(1) SCC 367 it has been stated that they have not compounded the penal interest and thus, the claim amount is aggregate. Respondent no.1 to 3 has been served. Neither they have filed any affidavit in reply nor they are appearing in court. In view thereof, I pass the following order:

4. Respondent no.1 to 3 to pay to the petitioner a sum of Rs.79,84,793.10 with interest thereon @ 12% from today till payment and / or

realisation.